

DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
825 North Capitol Street, NE, Suite 4150
Washington, DC 20002-4210

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner

v.

NATTONNIA ROSS
Respondent

Case No.: DH-A-08-800009

FINAL ORDER

On April 1, 2008, the Government filed a request for a hearing pursuant to D.C. Official Code § 8-1902(a) to determine whether a pit bull terrier named “Worksite”, owned by Respondent, Nattonnia Ross, is a dangerous dog as defined in D.C. Official Code § 8-1901(1)(A).¹ At the hearing, the Government also sought a further ruling from this administrative court, pursuant to D.C. Official Code § 8-1903, that the dog “would constitute a significant threat to the public health and safety if returned to [its] owner.” A ruling in favor of the Government on both issues would authorize it to humanely destroy the dog. *Id.*

I scheduled an evidentiary hearing on April 24, 2008. At the hearing, Thomas C. Collier, Esq., represented the Government, and the following witnesses appeared for the Government:

¹ D.C. Official Code § 8-1901 provides:

For purposes of this chapter, the term:

(1) (A) “Dangerous dog” means any dog that:

(i) Has bitten or attacked a person or domestic animal without provocation; or

(ii) In a menacing manner, approaches without provocation any person or domestic animal as if to attack, or has demonstrated a propensity to attack without provocation or otherwise to endanger the safety of human beings or domestic animals.

Cecilia Keller, Chief, Department of Health (“DOH”) Bureau of Community Hygiene, identified certain documents offered into evidence; April DeGraff alleged that Worksite had attacked both her and her dog “Spunky” and testified concerning these attacks as well as her injuries and the injuries sustained by Spunky; Kerry Burwell, Ms. DeGraff’s fiancé, testified regarding the alleged attacks on Ms. DeGraff and Spunky and a bite that he received; and Molly Lunaris, a DOH Program Specialist, testified regarding Worksite’s impoundment and her conversations with Ms. Ross and Ms. DeGraff. The Government also offered Petitioner’s Exhibits (“PX”) 101, 102, 103, 104, 105 and 105A through 105D, which I admitted into evidence. Ms. Ross also appeared and testified regarding Worksite’s alleged attacks on Ms. DeGraff and Spunky.

Based upon the testimony of the witnesses at the hearing, my evaluation of their credibility, and the exhibits admitted into evidence, I now make the following findings of fact and conclusions of law.

II. Findings of Fact

Ms. Ross resides at 5345 D Street, S.E, and owns a male pit bull, “Worksite”, who lived with Ms. Ross until January 28, 2008, when the Government impounded him. At the time of the incidents described in this decision, Ms. DeGraff and Mr. Burwell resided next door to Ms. Ross and owned Spunky, a male Labrador/shar-pei mix. A wall and a partial fence separated the residences’ rear yards; however, when not leashed, the dogs could move freely between the two yards.

The September 2007 Incident

In September 2007, while Ms. Ross and Ms. DeGraff were in their backyards, Worksite ran into Ms. DeGraff's yard and a fight ensued between Worksite and Spunky.² Ms. DeGraff interceded and Worksite bit her on the arm and hand. Mr. Burwell came outside and successfully separated the dogs.

Ms. DeGraff sought medical attention for her injuries. Although the bites had punctured her skin, the wounds did not require stitches. Spunky suffered a deep puncture wound which became infected and ultimately required medical treatment. There was no evidence that Worksite sustained any injuries.

Ms. DeGraff initially did not report this attack to either the police or DOH. On January 28, 2008, after a second incident, Ms. DeGraff filed a report with DOH asserting that Worksite had bitten her four months earlier.

The December 25, 2007 Incident

On December 25, 2007, as Mr. Burwell took Spunky into Ms. DeGraff's backyard on a leash, Worksite entered the yard from Ms. Ross's yard. Mr. Burwell ordered Worksite to stay away and Worksite initially appeared to follow this command; however, he returned to Ms. DeGraff's yard and attacked Spunky before Mr. Burwell was able to take Spunky inside. Hearing the commotion, Ms. DeGraff and Ms. Ross both came outside. Ms. DeGraff was not wearing shoes and while attempting to separate the dogs, slipped and fell backwards. Worksite then seized Ms. DeGraff's foot in its mouth and began shaking it. This bite tore deeply into the top and bottom of Ms. DeGraff's foot leaving gaping wounds. PX 105 through 105(D). After some

² A third dog was also in the yard at this time but was not involved in the fight.

effort, Mr. Burwell was able to extricate Ms. DeGraff from Worksite, although in so doing, Mr. Burwell received a bite on his finger.

Ms. Degraff's injury was severe, requiring seventeen stitches in the top and bottom of her foot to close her wounds. The scar from the attack begins at her ankle, proceeds to the center of her foot, and curves over the side of her foot to her instep and the bottom of her foot. As a result of this injury, Ms. DeGraff missed work for more than three months.

Mr. Burwell's injury did not require stitches, although he did receive medical attention. Spunky sustained minor injuries and did not receive professional medical care. As with the September incident, there was no evidence that Worksite sustained any injuries.

III. Conclusions of Law

A. Does Worksite Satisfy the Definition of a Dangerous Dog?

There are two elements to the statutory definition of a "dangerous dog." This definition provides that a "dangerous dog" is a dog: [1] that has bitten or attacked a person or domestic animal and [2] that the bite or attack was *without provocation*. D.C. Official Code § 8-1901(1)(A)(i) (emphasis supplied). This administrative court has interpreted the term "without provocation" when a domestic animal has been attacked as follows:

When the victim of an attack is a domestic animal, the most reasonable construction of "provocation" is that the dog perceives an imminent danger of harm to itself or to a human being from the other animal. Such a standard provides the necessary protection to members of the public and their pets, while respecting the statutory judgment that there are circumstances in which a dog may defend itself or a person. Because there is no way to know what a dog actually perceives, the test necessarily must be an objective one – *i.e.*, is it reasonable to expect that a dog would comprehend a threat, based upon the circumstances of which the dog is aware at the time of attack?

1. The September 2007 Incident

Ms. Ross and Ms. DeGraff agreed that before September 2007 their dogs moved freely, without incident, between the two yards. Ms. Ross testified that in September 2007, while both she and Ms. DeGraff were in their backyards, Worksite entered Ms. DeGraff's yard and a fight ensued between Worksite and Spunky. Ms. DeGraff conceded that, "he [Spunky] and Worksite just went at each other." Although Ms. DeGraff also testified that Worksite bit her while she was separating the dogs, this testimony did not establish that Worksite's bite was "unprovoked". On the evidence presented, it is equally plausible that Worksite, while engaged in battle with Spunky, bit Ms. DeGraff inadvertently when she intervened. Since Worksite may have perceived "an imminent danger of harm" from Spunky, what may have been an inadvertent bite to Ms. DeGraff cannot be considered unprovoked. Therefore, the Government has failed to establish by a preponderance of the evidence that Worksite committed an unprovoked attack on either Ms. DeGraff or Spunky in September 2007. D.C. Official Code § 2-509(b).

2. The December 25, 2007 Incident

The witnesses disagreed sharply on the December 25th altercation between the two dogs. Mr. Burwell testified that Worksite attacked Spunky in Ms. DeGraff's yard while he was leading Spunky on a leash away from Worksite. Ms. Ross testified that the dogs were "at the fence line" in her yard and that neither was on a leash. Yet, Ms. Ross also testified that after she took Worksite outside, she "turned back to go inside", heard someone yell, and "ran back outside." Thus, Ms. Ross was inside her house during the moments preceding and at the beginning of this

³ This case is being transmitted to LEXIS (www.lexis.com) for publication in the District of Columbia Office of Administrative Hearings database.

attack. She therefore had no opportunity to observe the dogs' location at the beginning of the attack or whether Spunky was initially on a leash. I therefore find Mr. Burwell's testimony more credible on these critical issues.

As to Worksite's December 25th attack on Ms. DeGraff, both she and Mr. Burwell testified convincingly regarding the fact that she had fallen before Worksite seized her foot. Ms. Ross acknowledged that she did not see Worksite bite Ms. DeGraff and did not attempt to rebut their version of this attack.

Under these circumstances, Worksite could not reasonably perceive Ms. DeGraff as a threat or that she posed an imminent danger. She had fallen backwards to the ground, when Worksite seized her foot in his mouth and began shaking it. He released her foot only when Mr. Burwell interceded. Unlike the September incident, the testimony established that on December 25th Worksite bit Ms. DeGraff deliberately and without provocation.

Similarly, Spunky's conduct did not constitute a provocation. Spunky was leashed on his owner's property moving away from Worksite at the time of the attack. *Dyson, Id.* at 5-6 (attack deemed "without provocation" where domestic animal victim was attacked while chained to a post in its own yard); *DOH v. Latimore*, A-01-80083, Lexis *1 (Final Order, October 31, 2001) (by merely walking in a public area, neither the leashed dog nor its owner provoked the attack) *Cf DOH v. Byrd*, OAH No. A-01-80075 at 13, Lexis *5 (Final Order, August 17, 2001) (failing to establish that attack on a dog was "without provocation" where the dog was not on a leash, entered a private yard and was fully engaged with the alleged attacking dog). The evidence is therefore sufficient to justify a conclusion that Worksite's attack on Spunky was also unprovoked.

Under the statute, a single attack without provocation upon a person or a domestic animal requires that a dog be declared dangerous. D.C. Official Code § 8-1901(1)(A)(i). Worksite satisfies both elements of the statutory definition and must be declared to be a dangerous dog.

B. Would Worksite Constitute a Significant Threat to the Public Health And Safety If Returned to Respondent?

Since Worksite has been found to be dangerous, the critical inquiry under the statute is whether his return to Ms. Ross would “constitute a significant threat to the public health and safety” D.C. Official Code § 8-1902. A dangerous dog that is deemed a significant threat to the public health and safety if returned to its owner may be humanely destroyed by the Government. D.C. Official Code § 8-1903.

There are two elements to the “significant threat” determination. First, the statute imposes certain mandatory requirements upon the owner of the dog. D.C. Official Code § 8-1904. An owner’s failure to satisfy all such requirements demonstrates that the dog is a “significant threat” because the requirements represent minimum standards to safeguard the public from a dog that has been found to be dangerous. *DOH v. Evans*, OAH No. A-01-80043 at 12-13, Lexis *82 (Final Order, February 9, 2001); *Accord Evans v. DOH*, Case No. 01ca1347 at 5 (D.C. Super. Ct. Apr. 20, 2001) (affirming on appeal the determination that the failure of the owner of a dangerous dog to satisfy all the requirements of D.C. Code §§ 6-1021.4, 6-1021.5 (1981 ed.) constitutes a significant threat to public health and safety). Alternatively, the Government may prove that there would be a significant threat even if all the statutory requirements are satisfied. *See Evans, Id.*; *see also DOH v. Long*, OAH No. A-01-80056 at 10, Lexis *4 (Final Order, July 9, 2001); *Dyson, supra.* at 6.

In this case the Government contends that Worksite is a significant threat even if all of the statutory requirements are ultimately satisfied. Worksite's attack on Ms. DeGraff starkly illuminates that Worksite is a serious threat. Worksite seized Ms. DeGraff's foot in its mouth and began shaking it after she slipped and fell backwards. This bite tore deeply into the top and bottom of Ms. DeGraff's foot leaving gaping wounds and required seventeen stitches in the top and bottom of her foot to close her wounds. The scar from this attack begins at Ms. DeGraff's ankle, proceeds to the center of her foot, and curves over the side of her foot past her instep. As a result of this injury, Ms. DeGraff was absent from work for more than three months.

Worksite's vicious attack on Ms. DeGraff demonstrates that he has a capacity for violent, aggressive behavior. Although compliance with the requirements of D.C. Official Code § 8-1904, such as having a proper enclosure to confine the dog, might reduce Worksite's danger to the public, his dangerous propensity to attack people would continue to pose a substantial risk.⁴ As a result, I conclude, that the Government has proven that Worksite is a significant threat if returned to Ms. Ross regardless of whether she were to demonstrate compliance with the minimum statutory requirements.

IV. Order

⁴ In a civil action for damages, notice that a dog has once bitten a person is ordinarily sufficient to establish knowledge that it may do so again. It is sufficient that the dog has manifested a vicious disposition, and a desire to attack people or other animals. W. Prosser, *Handbook of the Law of Torts* (West. Pub. Co., 1971)(4th ed.) § 76, pp. 501-02.

Based upon the above findings of fact and conclusions of law, and the entire record in this matter, it is, this ____ day of _____, 2008:

ORDERED, that Worksite, a dog owned by Respondent Nattonnia Ross, is hereby declared to be a dangerous dog, as defined in D.C. Code § 8-1901(1)(A); and it is further

ORDERED that it is hereby determined that Worksite will constitute a significant threat to the public health and safety if returned to his owner; and it is further

ORDERED, that this order will not take effect until May 5, 2008, (*See* OAH Rule 2811.5 which affords 5 days to allow service by mail and OAH Rule 2811.4 extending deadline which end on a Sunday). Ms. Ross will then have 5 days, (which deadline ends on a Saturday and pursuant to OAH Rule 2811.4 is therefore extended to May 12, 2008) to seek review in the D.C. Superior Court and a further stay from that court pursuant to D.C. Official Code § 8-1902. This administrative court's order is therefore **STAYED** until May 12, 2008 which stay will expire automatically, without further order of this administrative court, at 5:00 PM on May 12, 2008, unless the D.C. Superior Court or the D.C. Court of Appeals grants a further stay; and it is further

ORDERED, that the Government may not take action against Worksite, in accordance with D.C. Official Code § 8-1903, before the date noted above.

April 29, 2008

/S/_____
Louis J. Burnett
Administrative Law Judge